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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No. 271

In the Matter of the Criminal Contempt Charge

against

ROBERT CARUBA.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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INDEX

Table of Cases

Constitutions

Statutes

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Counter-Statement Concerning Jurisdiction

The respondent respectfully submits that the petitioner in his pending application is not seeking a review from the final judgment in this cause which was rendered by the court of last resort of the State of New Jersey. That final judgment was filed on January 9, 1948 (R. 2184), more than eight months prior to the filing of the petition herein. That judgment consisted of a remittitur of the Court of Errors and Appeals which, in fact, fully adjudicated all the rights of the petitioner. The nature and extent of the petitioner's arguments and the review obtained by him before that court of final authority in the State of New Jersey are more fully discussed hereinafter. The order of the Chancellor of New Jersey from which certiorari is here sought, was merely a recognition of the finality of the judgment of the Court of Errors and Appeals. That application to the Chancellor of New Jersey was a futile effort to review the judgment

of the court of last resort of that state. The Chancellor dismissed the application because to do otherwise "could be construed as and was a challenge to the judgment of the court of last resort of this State, which resolved and decided all the material questions raised in the present petition" (R. 2212, fol. 2228).

Opinions Below

Since the printing of the petition herein, the opinion of the Chancellor of New Jersey (R. 2211) denying a review of the judgment of the New Jersey Court of Errors and Appeals has been officially reported in 142 N. J. Eq. 358.

Counter-Statement of the Case

It is not our purpose here to portray at length the severity of Caruba's offenses. The attenuated version of his crimes as related in the petition filed by him before this court does not in the slightest degree depict the scope and depth of his grave conduct. It required more than forty printed pages to portray even sketchily to the court below how ramified and sweeping were the corruptive practices of the petitioner during the trial of the original cause. Untold quantities of evidence were wilfully and admittedly mutilated and destroyed by him. His testimony consisted of a web of evasions and a tissue of lies. His every effort was lent to baffle the judicial inquiry and to frustrate the search for truth. Each answer was given by him for the sole purpose of fobbing off the examination. Orders for the production of records were defied by him, and his corrupt and perjurious practices reached their acme at a time when he was already under virtual probation on a previous contempt conviction in the same cause. The record is voluminous (more than two thousand pages), but it is only upon a careful reading of all the testimony that the gravity

of Caruba's offenses can completely be appraised. This court may rest well assured that it was for good reason that the trial court described Caruba's conduct as the worst that ever came to his official notice in his more than a quarter of a century in the judiciary of New Jersey (R. 44), and that the New Jersey Court of Errors and Appeals characterized his crimes as brazen and without penitence (R. 2183).

Caruba's perjuries occurred when the cause was being heard before AUGUSTUS C. STUDER, one of the Masters of the Court of Chancery of New Jersey. The reference to Mr. Studer was made in pursuance of the rules of that court. Under the law of New Jersey, a Master, when he sits for the Chancellor (as was the case at bar) is, *pro hac vice*, the Chancellor. It was so held by the Vice Chancellor (R. 56), and this holding was affirmed by the New Jersey Court of Errors and Appeals (R. 2183).

The matter of Caruba's perjuries and contempts was laid before the Chancellor of the State of New Jersey by means of a lengthy petition setting forth in minute detail the nature of Caruba's offenses and the charges of criminal contempt arising therefrom (R. 1-37). The said petition alleged that the perjurious testimony of Caruba was given "corruptly and for the purpose of obstructing and subverting the justice of the cause" and prayed that he be cited to appear before the Chancellor to answer the charges (R. 32). That petition was verified by a supporting affidavit. On September 14, 1946, the Chancellor ordered Caruba to show cause on the 19th day of September why he should not be adjudged guilty in contempt of the Court of Chancery (R. 38-39). Application was thereupon made by Caruba's counsel to adjourn the hearing until October 9, 1946, and that request was granted by the court (R. 41).

On October 9, 1946, the trial of the contempt was had before the Honorable MAJA LEON BERRY, one of the Vice

Chancellors of the court. The matter was heard by him for the Chancellor of New Jersey under a general reference, provided for by the rules of court. Although Caruba pleaded not guilty, *the testimony and its falsity were both admitted by his counsel at the hearing* (R. 89-123). No federal question was raised or argued at any time during the course of the proceedings. At the conclusion of the trial an opportunity was afforded to counsel by the court to argue the law of the matter by way of written memoranda. Lengthy briefs were submitted by both sides, but nowhere and at no time was any federal question raised; nor was it argued or asserted that there was any denial of due process of law or equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution.

On January 29, 1947, the Court of Chancery filed a lengthy opinion in which all the points raised by counsel were considered and disposed of with painstaking care (R. 42-74). In view of the fact that no federal question was raised by Caruba's counsel, the matter was neither discussed nor considered by the trial court. The court held that under the law of the State of New Jersey the Master, at the time the perjuries were committed, was *pro hac vice* the Chancellor of the State of New Jersey and that Caruba's contempt was therefore *in facie curiae*. On February 20, 1947, an order was entered adjudging Caruba guilty of criminal contempt and he was sentenced to sixty days in the county jail (R. 75).

Under the statutes and practice of New Jersey, three courses of appeal were available to the petitioner:

(1) He could have taken an *immediate* appeal from the judgment of conviction to the Chancellor.[1]

1. New Jersey Revised Statutes 2:15-12 appears in full on page 21 of the Petition. The statute provides that any person adjudicated guilty of contempt in the presence of a Vice Chancellor shall have the right of *immediate* appeal to the Chancellor, which appeal shall operate as a stay of proceedings. (Italics ours.)

(2) He could have taken an appeal to the Court of Errors and Appeals of New Jersey,[2] which was then the court of last resort of that state.[3]

(3) He could have done what he is attempting to do in the instant proceedings, viz. take his appeal to the Chancellor and at the same time apply for review before the New Jersey Court of Errors and Appeals on the condition that if the Chancellor takes jurisdiction, the appeal to the Court of Errors and Appeals be dismissed (See p. 2 of the Petition).

Notwithstanding the fact that the Vice Chancellor found that Caruba's contempt was *in facie curiae,* Caruba chose to side-step his right of appeal to the Chancellor and to seek review in the court of last resort. On March 17, 1947, Caruba filed his Notice of Appeal to that court (R. 80), and shortly thereafter filed his Petition of Appeal setting forth various grounds upon which he based all his allegations of error. More than thirty grounds of appeal are set forth in that petition (R. 82-88). Nowhere among those grounds is a federal question raised. Nowhere is there mentioned the charge that Caruba was denied due process of law or equal protection of the laws. A brief was thereafter filed by the appellant consisting of 160 printed pages of argument on fact and law. Every meritorious and procedural question was argued at great length but at no time was any federal constitutional question presented or argued. A copy of the index to that brief prepared by Caruba's counsel is set forth in the appendix hereto (pp. 21 and 22). Subsequently a further brief was filed by him in that court consisting of 22 additional pages. Neither in that second brief nor when the matter was argued orally

2. New Jersey Revised Statute 2:15-13 appears in full on page 9 of the Petition. It provides that when any person is adjudicated guilty of contempt of court by the Court of Chancery for acts done or omitted elsewhere than in the presence of the court, he may appeal from such adjudication to the Court of Errors and Appeals.

3. Article VI Section I Paragraph 1 of the New Jersey Constitution of 1844 reads as follows: "The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore; * * *"

before that highest court of the State of New Jersey was the question of denial of due process or equal protection mentioned.

On October 31, 1947, the New Jersey Court of Errors and Appeals filed its opinion affirming the conviction (R. 2182). It will be observed that substantially every question raised by Caruba in his petition of appeal and in his briefs before that court were passed upon and disposed of. Thus Caruba was afforded a full hearing by the court of last resort of the State of New Jersey on all the factual, meritorious and procedural questions raised by him both in the court of first instance and in the court of last resort.

On November 7, 1947, and before the remittitur of the Court of Errors and Appeals was filed, the petitioner applied to the Court of Errors and Appeals for leave to reargue the appeal (R. 2185). In his petition for such leave, a federal question was first raised. In that petition he repeated the arguments theretofore made with respect to "obstruction" but for the first time charged the proceedings with a constitutional taint. The petition for rehearing was denied by the Court of Errors and Appeals without opinion on December 11, 1947 (R. 2204), and on January 9, 1948, a remittitur was entered in that Court affirming the conviction (R. 2184). On January 12, 1948, a second application for reargument was made to the Court of Errors and Appeals. That second petition for rehearing was in all respects identical with the first petition for rehearing (R. 2197). However, in the brief supporting the second application for rehearing, petitioner urged an alternate suggestion upon the court (R. 2194). That suggestion was that if leave to rehear be denied, then the court should *dismiss* his appeal without prejudice notwithstanding that it considered all the meritorious issues raised in his original petition of appeal and briefs. The petitioner argued that if the Court of Errors and Appeals would modify the remittitur so as to dismiss the appeal without prejudice

rather than to affirm the conviction, he could then inaugurate new proceedings to the Chancellor for another appeal (R. 2196). Petitioner's application was again denied without opinion and the remittitur of the Court of Errors and Appeals affirming the conviction, which had theretofore been entered on January 9, 1948, remained undisturbed. The filing of this remittitur constituted the final judgment in this cause.

Notwithstanding the fact that the Court of Errors and Appeals refused to dismiss the appeal in the face of petitioner's argument that such dismissal was necessary to put him "in the position to seek a review before the Chancellor" (R. 2196), the petitioner instead of applying to this court at that time for a writ of certiorari within the statutory time limit, appealed from his judgment of conviction to the Chancellor of the State of New Jersey, a court subordinate in jurisdiction to the Court of Errors and Appeals (R. 2205). In his petition of appeal to the Chancellor (R. 2205-2210) Caruba alleged numerous grounds of error committed by the Vice Chancellor. We respectfully request this court to make a side-by-side comparison between this petition of appeal to the Chancellor and the petition of appeal originally presented to the Court of Errors and Appeals, discussed earlier in this brief and appearing in the record at page 82 *et seq.* Every allegation of error in the petition before the Chancellor with the exception of allegations 9, 17, 18 and 19, had previously been urged in the petition before the Court of Errors and Appeals. Those four allegations of error, except with respect to the federal aspect, had previously been argued *in extenso* in Caruba's briefs before the Court of Errors and Appeals and were fully considered and determined by that court even though they did not appear as such in the petition of appeal before that court. The federal questions were first raised on a petition for rehearing before the Court of Errors and Appeals after that court had rendered its decision. In other words, every ground of error

urged by Caruba before the Chancellor had theretofore been considered, passed upon and disposed of before the Court of Errors and Appeals.

The Chancellor of the State of New Jersey heard Caruba's appeal. The matter was argued before him personally and briefs were submitted. On June 9, 1948, the Chancellor filed his opinion (R. 2211). In that opinion he stated that the judgment of the Court of Errors and Appeals "which resolved and decided all the material questions raised in the present appeal," was final and dispositive and "must be respected and obeyed" by him (R. 2212-2213). On July 6, 1948, the petition of appeal before him was dismissed. It is from this dismissal that *certiorari* is now sought.

Counter-Argument

It is respectfully urged that the petition for a writ of certiorari be denied for the following reasons:

1. The constitutional revision of the court system of of the State of New Jersey which abolished the Court of Chancery and the office of Chancellor of New Jersey has rendered moot the application before this court.
2. The time for appeal to this court has expired.
3. The Federal question was not timely raised in the court below.
4. The defendant was not denied due process of law or equal protection of the laws.

The Question Has Become Moot

When the government of the colony of New Jersey was established by the Constitution of 1776, the Governor of the state was also designated as the Chancellor of the

colony.[4] By the Constitution of New Jersey adopted in 1844, a Court of Chancery was created,[5] to consist of a Chancellor.[6] On January 1, 1948, a new constitution became effective. The office of Chancellor and the Court of Chancery were eliminated.[7] All the functions, powers and duties which had theretofore been conferred upon the Chancellor were transferred, under the new constitution, to the judges of the Superior Court.[8] Under the new constitution, appeals from the Superior Court may be taken to the Appellate Division of the Superior Court,[9] and from there, by grace, to the New Jersey Supreme Court.[10] The new Supreme Court has become the court of last resort in all causes[11] in lieu of the former Court of Errors and Appeals which was abolished. Although the new constitution became effective on January 1, 1948, the judicial article thereof took effect on September 15, 1948, two days after the petition for a writ of certiorari was filed in this Court.

The petitioner complains that when the New Jersey Court of Errors and Appeals affirmed his conviction, after considering all the merits and procedural questions raised and argued, he was denied the right thereafter to appeal to the then Chancellor, a court whose jurisdiction was inferior to the Court of Errors and Appeals. He contends that notwithstanding the fact that the court of final authority had passed upon the validity of the judgment and had denied his application for a further appeal to the Chancellor, nevertheless the Chancellor, by dismissing the petitioner's appeal subsequently made to him, had denied him his constitutional rights. He asserts that the statute providing for an immediate appeal to the Chancellor from the conviction by the Vice Chancellor is still available to him

4. New Jersey Constitution of 1776, Section VIII.
5. New Jersey Constitution of 1844, Article VI, Section 1, Paragraph 1.
6. New Jersey Constitution of 1844, Article VI, Section 4, Paragraph 1.
7. New Jersey Constitution of 1947, Article VI, Section 1, Paragraph 1.
8. New Jersey Constitution of 1947, Article XI, Section 4, Paragraph 10.
9. New Jersey Constitution of 1947, Article VI, Section 5, Paragraph 2.
10. New Jersey Constitution of 1947, Article VI, Section 5, Paragraph 1.
11. New Jersey Constitution of 1947, Article VI, Section 2, Paragraph 2.

notwithstanding the fact that the Court of Errors and Appeals had already adjudicated all questions. The very statute upon which the petitioner relies[12] has since been repealed.[13]

If a writ should be allowed, then in effect this court would be requested to send the matter back to the Chancery Division of the Superior Court of New Jersey which has already passed upon the issues, or in the alternative, to the Appellate Division of the Superior Court[14] which is in itself a court inferior to the new Supreme Court, the successor to the Court of Errors and Appeals which also has passed upon the subject. The Appellate Division would then be bound by the law of the case which had already been laid down by the former Court of Errors and Appeals. In other words, this court is being requested to remand the case for trial before a tribunal which has already passed upon and decided the case and the issues therein involved. We submit that the facts of the case fall directly within the holding of *United States* v. *Evans*, 213 U. S. 297, where this court held that when the judgment appealed from cannot be affected by the decision of this court the case becomes a moot one and the appeal should be dismissed. It should also be noted that no question of future public interest is involved in this application because the very court complained of and the very procedure sought to be availed of have both since been abolished.

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12. N. J. R. S. 2:15-12.

13. Laws of New Jersey 1948 Chapter 333, Section 3, approved August 30, 1948, effective September 15, 1948.

14. New Jersey Laws of 1948, Chapter 333, Section 1, effective September 15, 1948, reads as follows:

"1. Section 2:15-3 of the Revised Statutes is amended to read as follows:

2:15-3. Every summary conviction and judgment by the Law Division or Chancery Division of the Superior Court, a county court or any inferior court for a contempt shall be reviewable, both upon the law and the facts, by the Appellate Division of the Superior Court, which court shall give such judgment as it shall deem to be lawful and just under all the circumstances of the case and such judgment shall be enforced as the court shall order."

The Time for Appeal Has Expired

The second reason urged by us for a dismissal of this petition is that the time for appeal to this court has expired. The final judgment of the court of last resort of New Jersey was filed on January 9, 1948 (R. 2184). That judgment was entered after every factual, meritorious and procedural question had been raised, argued, twice reargued, considered and disposed of. The taking of a futile appeal to a state court of inferior jurisdiction after a court of final authority refused to mould its judgment so as to enable the petitioner to take such an appeal, could not in any way alter the finality of the adjudication by the highest court of the state. When that abortive appeal to the Chancellor was made, the Chancellor himself held that "the judgment which the defendant seeks to modify is not now the decree of this court (the Court of Chancery), except for a single purpose, namely to be carried into effect; for all other purposes it is the judgment of the court of last resort, and as such must be respected and obeyed by this court. *Jewett* v. *Dringer*, 31 N. J. Eq. 586, 590" (R. 2213).

It is contended by the petitioner that the appeal to the Chancellor was a necessary step to exhaust his remedies in the state courts. This contention is untenable. The Court of Errors and Appeals had already denied the petitioner the right of appeal to the Chancellor by refusing to enter the petitioner's form of remittitur which would have opened the door for an application to the Chancellor for review.[15] At this point all remedies in the State of New Jersey had been exhausted. Notwithstanding the fact that the Court

15. The form of remittitur proposed by the petitioner appears on pages 2192-2193 of the record. The form requested recites that the appeal "be and the same is hereby dismissed for want of jurisdiction in this cause, without prejudice to the right, if any, of the appellant to prosecute a review elsewhere."

The application for that form of remittitur was denied by the Court of Errors and Appeals on February 9, 1948 (R. 2204).

of Errors and Appeals had denied that the petitioner had any right further to prosecute his appeal to the Chancellor, he proceeded to press an appeal before the Chancellor reasserting all grounds theretofore argued before and passed upon by the court of last resort. The act of the Chancellor in dismissing the appeal before him was in direct pursuance of the mandate implicit in the Court of Errors and Appeals decision. It neither did nor could add to the finality of that decision.

The remittitur of the Court of Errors and Appeals having been filed on January 9, 1948, the time for filing the within application expired April 9, 1948. 28 U. S. C. A. Sect. 350. So peremptory is this statutory mandate, that even where good cause was shown and an extension was granted by a member of this court after the three months' period had expired, this court held that it was without jurisdiction to entertain the appeal. *Matton Steamboat Co.* v. *Murphy,* 319 U. S. 412. Nor did petitioner's recourse to the Chancellor serve to toll the running of the three months' period, for the judgment of the New Jersey appellate tribunal fully determined the rights of the parties, so that nothing remained to be done by the lower court except the ministerial act of entering the judgment which the appellate court had directed. *Jewett* v. *Dringer,* 31 N. J. Eq. 586, 590. The Chancellor so held in his opinion in the instant case (R. 2211, at p. 2213). The foregoing test of finality was recently asserted in *Department of Banking* v. *Pink,* 317 U. S. 264, where this court said, at page 268:

> "For the purpose of the finality which is prerequisite to a review in this court, the test is not whether under local rules of practice the judgment is denominated final (Wick v. Superior Court, 278 U. S. 575, 49 S. Ct. 94, 73 L. Ed. 515; Cheltenham & Abbington Sewerage Company v. Pennsylvania Public Utility Commission, 317 U. S. 588, 63 S. Ct. 38, 87 L. Ed. ——, decided October 12, 1942), but rather whether the record shows that the order of the appel-

late court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court. See Gorman v. Washington University, 316 U. S. 98, 62 S. Ct. 962, 86 L. Ed. 1300. Where the order or judgment is final in this sense, the time for applying to this Court runs from the date of the appellate court's order, since the object of the statute is to limit the applicant's time to three months from the date when the finality of the judgment for purposes of review is established."

The Federal Questions Were Not Seasonably Raised

The third reason asserted by us for a dismissal of the application is that the federal questions advanced herein by the petitioner were not seasonably raised in the state courts. The first time that *any* federal question was asserted by the petitioner was upon petition for rehearing after the cause had been fully submitted to and decided by the Court of Errors and Appeals (R. 2188). In the petition of appeal presented by Caruba before that court (R. 82), and in the exhaustive briefs submitted by him in the course of that appeal, never once was a federal claim made. It was held by this court in *American Surety Co.* v. *Baldwin*, 287 U. S. 156, that it is too late to assert a federal claim in a petition for a rehearing before the state court of last resort. Of similar holding are *Radio Station WOW* v. *Johnson*, 326 U. S. 120; *Missouri ex rel. Missouri Insurance Co.* v. *Gehner*, 281 U. S. 313; *Rooker* v. *Fidelity Trust Co.*, 261 U. S. 114; *Wall* v. *Chesapeake & Ohio R. R. Co.*, 256 U. S. 125. Petitioner seeks to avoid the force of these decisions by claiming "surprise" and asserting that the federal questions arose for the first time when the appellate court rendered its opinion. We respectfully submit that such assertion is legally incorrect with respect to all three federal questions raised in the petition and *factually* incorrect with respect to the third. The question of obstruction was argued at great length before the trial

court (R. 96-123) and before the appellate tribunal. We refer this court to Paragraphs 2e, 3d, 3e, 4b, 4c, 4f, and 11 of the Petition of Appeal to the New Jersey Court of Errors and Appeals (R. 83-86) and to Point II of appellant's main brief before that court (see Index page of appellant's brief set forth in Appendix hereto). This question of obstruction had been raised throughout the proceedings, but solely as a matter of state law. There had been ample opportunity to present the objection as one arising under the Fourteenth Amendment, but it was never availed of. The federal claim must be made *as such* directly and at the earliest opportunity and with sufficient definiteness so that there can be no doubt that the attention of the state court was challenged thereto. *Live Oak Water Users' Assn.* v. *Railroad Commission,* 269 U. S. 354. The fact that it was raised solely as a matter of state law cannot serve as a basis for review by this court. *American Surety Co.* v. *Baldwin, supra.*

Petitioner contends that he was lured into a "trap" when the appellate court, after deciding that his contempt was *in facie curiae,* did not remand the case to the Chancellor for further action, but proceeded to consider and decide all the meritorious and procedural issues raised and argued by him *in extenso* in his appeal. This, he urges, was an unanticipated disposition of the case and falls within the exception as laid down in *Brinkerhoff-Faris Trust and Savings Co.* v. *Hill,* 281 U. S. 673. But an examination of the *Brinkerhoff* case reveals that because of the "unanticipated act" of the Missouri Supreme Court, the appellant was completely denied any review whatsoever; whereas in the case at bar, Caruba sought and obtained a complete review of the law and the facts of his case by the court of final authority of New Jersey.

There Was No Denial of Due Process or Equal Protection

We respectfully urge, as a final reason for the dismissal of the petition, that the petitioner has presented no meritorious grounds for appeal to this court, and that he has not been denied due process of law or equal protection of the laws. His petition presents three federal questions and we shall dispose of them *seriatim.*

The first question raised by him is that the appellate court found an obstruction to the administration of justice whereas there was no prior charge or determination of obstruction in the trial court. In New Jersey, obstruction is not a necessary element of contempt. The test is that the contemptuous act must either tend or be designed to thwart the judicial process.[16] The petition which inaugurated the proceedings recited the offenses at length and then charged that the "testimony was given corruptly and for the purpose of obstructing and subverting the justice of the cause" (R. 32). The Vice Chancellor in his opinion did not find there was *no* obstruction.[17] He merely stated

16. *In re Hand*, 89 N. J. Eq. 469; *State* v. *Doty*, 32 N. J. L. 403; *In re Merrill*, 88 N. J. Eq. 261; *Sachs* v. *High Clothing Co.*, 90 N. J. Eq. 545; *In re Megill*, 114 N. J. Eq. 604; *In re Hendricks*, 113 N. J. Eq. 93; *Backer* v. *A. B. & B.*, 107 N. J. Eq. 246; *In re Ries*, 101 N. J. Eq. 315; *Ivens* v. *Empire Floor*, 119 N. J. Eq. 273; *Edwards* v. *Edwards*, 87 N. J. Eq. 546; and *Seastrom* v. *N. J. Exhibition Co.*, 69 N. J. Eq. 15.

17. The Vice-Chancellor, in appraising Caruba's conduct, stated in his opinion (R. 50):

> "And there was nothing in the conduct of this defendant as a witness which calls for any reward. His recantation or retraction was not the result of contrition or repentance. It was not voluntary. It came only after a long period of relentless questioning by counsel and after the defendant witness had been driven into a corner, or *cul de sac*, from which there was no escape except by a confession of his iniquity. In one instance the false testimony was given on April 2, 1946. It was not corrected until April 5, three days later, when his confession was literally torn from him. In the other case he testified on May 2nd and recanted the same day under like circumstances. And still there is no sign of repentance. He admits having tried to deceive the court, but claims that because of his confession he has done no wrong. The perjury was the result of a studied plan of defense, thought out long in advance of the trial in which committed. This is apparent from the admitted mutilation of the $250.00 check months before the trial. And yet he offers no apology. He is still arrogant. A confession of sin without repentance merits no reward of forgiveness, nor is it a key to salvation."

that under the law of New Jersey, "any act or conduct which obstructs or tends to obstruct the course of justice constitutes a contempt of court" (R. 51). This question of obstruction was argued with painstaking detail before the Court of Errors and Appeals, and that court found that the contempt was intended to and did impede the course of justice and therefore was obstructive (R. 2183). It is contended by the petitioner that this constitutes a denial of due process. It is not denied by the petitioner that he had the unlimited opportunity to present all his defenses, and that he availed himself of that opportunity fully in the trial court and upon appeal. Due process is satisfied if there is reasonable notice and reasonable opportunity to defend. *Dohany* v. *Rogers*, 281 U. S. 362; *Hurwitz* v. *North*, 271 U. S. 40; *Backus* v. *Union Depot Co.*, 169 U. S. 569. Cases applying this rule specifically to contempt charges are *Cooke* v. *United States*, 267 U. S. 517; *Randall* v. *Brigham*, 7 Wall. 523; and *In re Savin*, 131 U. S. 267. The law in New Jersey is the same. *In re Cheeseman*, 49 N. J. L. 115. That there was any doubt or misapprehension as to the charges is inconceivable. There is no suggestion in the record that the time and opportunity given to Caruba for defense was not ample. He was represented by able counsel throughout the proceedings and was heard fully in the court below and in the court of last resort.

The second federal question asserted by petitioner is that the Chancellor, in dismissing his appeal after the matter had been reviewed by the Court of Errors and Appeals, deprived the petitioner of a hearing on the merits, and that by this action, the petitioner was denied equal protection of the laws. He states that the appellate court dealt with "*some* of the merits of petitioner's case" and creates the misleading impression that there were *other* merits which the Chancellor might have passed upon had not the appellate tribunal foreclosed that opportunity. The fact of the matter is that the petitioner in his appeal to the appellate court sought a decision by that court on all the merits of

his defense. Having obtained an adverse ruling on all issues, he proceeded with a new appeal before the Chancellor asserting *precisely* the same merits that he had theretofore laid before the appellate court. No meritorious defense was asserted before the Chancellor which had not theretofore been presented to the higher court and passed upon by it.[18]

It is to be noted that an appeal was taken to the New Jersey Court of Errors and Appeals from the Chancellor's order of dismissal, which appeal at present is pending and undecided. This action magnifies the anomaly of the petitioner's position, for he recognizes the fact that any disposition of the cause by the Chancellor is subject to review by the very court which had already considered and adjudicated the matters in issue. He was never denied an appeal. He sought and obtained a review before the highest tribunal of the state. His attempt to return to the Chancellor is analogous to attempting to return to the Circuit Court of Appeals for a review of a District Court judgment which the United States Supreme Court had fully reviewed on direct appeal. The statutory right of *immediate* appeal to the Chancellor was available to the petitioner. He chose to by-pass that forum by going directly to Errors and Appeals. The final judgment of the state court must be taken as determining that the procedure actually adopted satisfied all state requirements. This court, in reviewing a judgment of the state court, will not decide local questions. *United Gas* v. *Texas*, 303 U. S. 123, 139; *John* v. *Paullin*, 231 U. S. 583, 585; *Lee* v. *Central of Georgia R. Co.*, 252 U. S. 109, 110; *Central Union Co.* v. *Edwardsville*, 269 U. S. 190, 194, 195.

The final federal question argued by the petitioner is that in fact there was no obstruction and therefore his conviction was without due process. We have already pointed

18. The Chancellor, in his opinion (R. 2212), stated that the court of last resort "resolved and decided all the material questions raised" in the petition before him.

out that this federal question could have been raised in the trial court and in the state appellate court. It was not urged until a petition for reargument was made to the appellate court. Caruba concedes in his petition herein that the federal question was not timely raised. However, he contends that this court will permit federal questions to be raised unseasonably if such is the practice in the state court. He then asserts that such is the practice of New Jersey. The contrary is the fact. In New Jersey an appellate tribunal will not consider any point of appeal which was not seasonably raised in the court below, except questions of jurisdiction and public policy.[19] The cases cited in the footnote are only a few of the host of authority in the State of New Jersey holding contrary to the petitioner's contention.

Caruba asserts that there was no finding of actual obstruction in the state courts, and this notwithstanding the fact that the New Jersey Court of Errors and Appeals in its opinion specifically found obstruction to exist (R. 2183). The requirement of obstruction is purely one of local law. As was heretofore stated the law of New Jersey is clearly to the effect that it is sufficient if the contempt be one which is designed or tends to obstruct the administration of justice.[20] That is the local law of New Jersey even though other jurisdictions may hold otherwise. The Due Process Clause has never been perverted so as to force upon the forty-eight States a uniform code of criminal procedure. *Carter* v. *Illinois*, 329 U. S. 173, 175.

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19. *Oliver* v. *Phelps*, 20 N. J. L. 180, affd. 21 N. J. L. 597; *Penn Mut. Life Ins. Co.* v. *Semple*, 38 N. J. Eq. 575; *Van Alstyne* v. *Franklin Council*, 69 N. J. L. 672; *Webster* v. *Board of Chosen Freeholders*, 86 N. J. L. 256; *Allen* v. *City of Paterson*, 99 N. J. L. 489; *Goldfarb* v. *Phillipsburg Transit Co.*, 103 N. J. L. 690; *Trimmer's Executor* v. *Adams*, 18 N. J. Eq. 505; *Noon* v. *D. L. & W. R. Co.*, 106 N. J. L. 526, certiorari denied 283 U. S. 818; *Werner* v. *Commonwealth*, 109 N. J. L. 119; *Singac Trust Co.* v. *Totowa*, 112 N. J. L. 99; *Jasion* v. *Preferred Accident Insurance Co.* 113 N. J. L. 108; *Ruppert* v. *Jernstedt & Co.*, 116 N. J. L. 214; *Wilentz* v. *Society for Establishing Useful Manufacturers*, 121 N. J. L. 197; *Rosenbloom* v. *Great American Indemnity Co.*, 122 N. J. L. 337; *Armour* v. *Carboy*, 124 N. J. L. 205; *Benz* v. *Central Railroad of N. J.*, 82 N. J. L. 197, affd. 83 N. J. L. 780; *Slater Realty Corp.* v. *Meys*, 137 N. J. L. 263.

20. See footnote 16.

Conclusion

Petitioner at the commencement of his application herein informs this court that an appeal has been taken to the New Jersey Court of Errors and Appeals seeking a review in that court of the Chancellor's order of dismissal. The very basis of the Chancellor's order, as stated in his opinion (R. 2211) is that he was without power to review the judgment of the Court of Errors and Appeals which had fully passed upon the subject matter and which had refused to place Caruba in a position where an appeal to the Chancellor would lie. The present appeal to the Court of Errors and Appeals is one more step to perpetuate litigation which has become well nigh endless. Upon dismissal of this latest appeal there is nothing to stop Caruba from taking another appeal to the Appellate Division of the new New Jersey Superior Court. Upon dismissal of that appeal, an application could be made to the new New Jersey Supreme Court. The question might then again be brought up to this court for review. We respectfully submit that somewhere there must be an end to litigation. That stage should have occurred when the Court of Errors and Appeals affirmed the judgment of the court below and twice denied reargument. We respectfully urge that this latest maneuver before the highest court of New Jersey is an idle and futile ceremony and that the dismissal of this writ should not await another disposition of a nugatory appeal to a court which has already disposed of the entire subject matter of the controversy, and which only recently denied an application for stay of execution pending the within application.

For the foregoing reasons it is respectfully submitted that the petition for writ of certiorari should be denied.

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[APPENDIX FOLLOWS]

Appendix

INDEX TO CARUBA'S BRIEF FILED WITH THE NEW JERSEY COURT OF ERRORS AND APPEALS